



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 447

Pretoria, 9 September 2002

No. 23828



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GENERAL NOTICE

NOTICE 1715 OF 2002

The Minister for Intelligence Services intends to table the following Bills in Parliament in September, 2002:

A. The Intelligence Services Bill, 2002

MEMORANDUM OF THE OBJECTS OF THE INTELLIGENCE SERVICES BILL, 2002

1. BACKGROUND

In 2001, the Minister for Intelligence Services (herein after referred to as Minister), gave directions for the review of the intelligence dispensation with regards to the administration, control and supervision of the Services. This process was in support of the process which was already underway under the auspices of the Presidential Intelligence Budget Advisory Committee (PIBAC) chaired by the Deputy President, which looked at amongst other issues, building capacity within the Services, resourcing and creating a conducive environment for optimal efficiency.

Pursuant to these initiatives, the Minister, in conjunction with the Minister for Public Service and Administration, established a Task Team on Conditions of Service, comprising of members of the Services and the Department of Public Service and Administration, to conduct a comparative research on the administration and human resource management in the Services.

Since the inception of the intelligence dispensation in 1995, there has been no consistency in the way best practice was imported from the Public Service to the Intelligence Services. This was further exacerbated by the fact that Intelligence Services are excluded from the application of labour law and thus did not participate in the Public Service Collective Bargaining Council although they were expected to follow agreements that were reached through the said process. This anomaly had to be corrected and this inequity needed to be addressed by both Ministers.

2. SUMMARY OF THE CONTENTS OF THE BILL

The Bill seeks to regulate:

- (a) The retirement age of members of the Services, which is 60 years, and to provide for the Minister to extend the years of service to 65 years on account of public interest.
- (b) The establishment of the Intelligence Services Council on Conditions of Service which will comprise of:

- (i) a Chairperson, Deputy Chairperson and Commissioner and research staff which will:
 - (aa) conduct research and make recommendations to the Minister on conditions of service;
 - (bb) review and monitor implementation of policies on conditions of service; and
- (c) The establishment of the South African National Academy of Intelligence which will:
 - provide intelligence training;
- (d) The activities of former members of the Services in relation to the:
 - (i) Disclosure of classified information which is prohibited without approval of the Director-General;
 - (ii) Employment in the security industry which is restricted for a period of three years unless a permission is granted by the Director-General;
 - (iii) Communication with associates, members or representatives of the Services in a manner that is likely to be detrimental to the security of the Republic

3. OTHER DEPARTMENTS CONSULTED

Presidential Intelligence Budget Advisory Committee
Department of Safety and Security
Department of Public Service and Administration
Department of Defence
Department of Labour
Department of Health

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

B. The National Strategic Intelligence Amendment Bill, 2002

MEMORANDUM OF THE OBJECTS OF THE NATIONAL STRATEGIC INTELLIGENCE AMENDMENT BILL, 2002

1. BACKGROUND

The National Strategic Intelligence Act, 1994 was promulgated in 1995 to provide for

- (a) The establishment of Nicoc;
- (b) The Coordinator of Intelligence within the national intelligence structures;
- (c) Define the functions of the national intelligence structures;
- (d) A Coordinator who would be responsible for coordination of intelligence;
- (e) Nicoc to advise Cabinet with respect to national strategic intelligence.

In 1995, subsequent to the promulgation of the Act, the President called for the demarcation of the responsibilities of the Minister responsible for Intelligence and those of the Coordinator of Intelligence.

As a result, the Act was amended in 1998 to provide for:

- (i) Separation of the responsibilities of the Coordinator from those of the Minister for Intelligence Services with regards to coordination of intelligence;
- (ii) The Minister as a member of Nicoc to advise Cabinet on coordination of intelligence;
- (iii) A Coordinator who would be chief functionary of Nicoc;
- (iv) Nicoc and the Co-ordinator to function under the supervision of the Minister for Intelligence services;
- (v) The Minister as the political head responsible for coordination of intelligence.

In order to put intelligence at the centre of government business, a review of the functioning of Nicoc was conducted and a need arose to strengthen the legal mandate.

2. SUMMARY OF THE CONTENTS OF THE BILL

- (a) To exclude the Minister as a member of Nicoc;
- (b) To define subversion ;
- (c) To empower the Minister to establish structures to assist him or her in the advisory function to Cabinet and the national executive on co-ordination of intelligence and national strategic intelligence;

- (d) To provide for the Agency to supply counter-intelligence relating to national strategic intelligence to Nicoc;
- (e) To provide for the SAPS to coordinate crime intelligence and to supply crime intelligence relating to national strategic intelligence to Nicoc;
- (f) To provide for regulations on:
 - (i) security clearance investigations;
 - (ii) co-ordination of intelligence;
 - (iii) protection of information;

3. OTHER DEPARTMENTS CONSULTED

Presidential Intelligence Budget Advisory Committee
Department of Safety and Security
Department of Public Service and Administration
Department of Defence

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

REPUBLIC OF SOUTH AFRICA

NATIONAL STRATEGIC INTELLIGENCE ACT AMENDMENT BILL

*(As introduced in the National Assembly as a section 75-Bill; explanatory summary of Bill
published in Government Gazette No. 23828 of 9 September 2002) (The English
text is the official text of the Bill)*

(MINISTER OF INTELLIGENCE)

[B - 2002]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Strategic Intelligence Act, 1994, so as to exclude the Minister as a member of Nicoc, to re-define counter-intelligence, to provide for security clearance by some members of the national intelligence structures, to further define the functions of the Minister pertaining to co-ordination of intelligence, and to regulate the functions of the National Intelligence Structures; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 39 of 1994, as amended by section 1 of Act 37 of 1998 and section 24 of Act 66 of 2000

1. Section 1 of the National Strategic Intelligence Act, 1994 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "counter-intelligence" of the following definition:

" 'counter- intelligence' means measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect classified **[intelligence and]** information, to conduct security screening

investigations, and to counter subversion, sabotage and terrorism aimed at, or against personnel, strategic installations or resources of the Republic;"; and

(b) by the insertion after the definition of "regulation" of the following definition:

" 'relevant members of the National Intelligence Structures' means—

(a) the intelligence division of the National Defence Force;

(b) the intelligence division of the South African Police Service;

(c) the Agency; and

(d) the Service."

Amendment of section 2 of Act 39 of 1994, as amended by section 2 of Act 37 of 1998

2. Section 2 of the principal Act is hereby amended—

(a) by the addition to subsection (1)(b) of the following subparagraphs:

"(iv) supply on request intelligence relating to any such threat to the Department of Home Affairs for the purposes of fulfilment of any immigration function;

(v) supply intelligence relating to national strategic intelligence to Nicoc;"; and

(b) by the substitution for subparagraph (a) of subsection (3) of the following subparagraph:

"(a) to gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the South African Police Service as contemplated in section 205(3) of the Constitution; and"

Amendment of section 4 of Act 39 of 1994, as amended by section 37 of Act 37 of 1998 and section 25 of Act 66 of 2000

3. Section 4 of the principal Act is hereby amended by the deletion of paragraph (a) of subsection (1).

Amendment of section 5 of Act 39 of 1994 as amended by section 5 of Act 37 of 1995

4. Section 5 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).

Amendment of section 5A of Act 39 of 1994, as inserted by section 5 of Act 37 of 1998

5. Section 5A of the principal Act is hereby amended by the substitution for subsection (3) of the following subsections:

"(3) Subject to subsection (2), the Minister may, for the purposes of the functions contemplated in subsection (1), establish such support structures as are necessary—

(a) for the efficient co-ordination of intelligence; and

(b) to assist the Minister to advise the President and the national executive.

(4) The Minister may delegate to the Co-ordinator for Intelligence, the function contemplated in subsection (3).

(5) The Minister must advise the President and the national executive on national strategic intelligence and co-ordination of intelligence."

Substitution of section 6 of Act 39 of 1994, as amended by section 7 of Act 37 of 1998 and section 26 of Act 66 of 2000

6. The following section is hereby substituted for section 6 of the principal Act:

"Regulations

6. (1) The Minister may subject to subsection (2), make regulations regarding—

- (a) the protection of classified information;
- (b) the carrying out of security screening investigations by members of the National Intelligence Structures;
- (c) coordination of intelligence as an activity;
- (d) production and dissemination of intelligence for consideration by Cabinet and the executive;
- (e) the coordination of counter-intelligence by the Agency;
- (f) the coordination of crime intelligence; and
- (g) any other matter necessary for the effective administration of this Act.

(2) Any regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) A security screening investigation contemplated in subsection (1)(b) shall entitle the relevant members of the National Intelligence Structures concerned, to subject the person undergoing a security clearance investigation to a polygraph examination as prescribed, in order to determine the reliability of information provided by him or her.

- (aa) The IG will only monitor the intelligence and counter- intelligence functions of the Services.
- (bb) The IG will notify the Head of a Service before he or she gains access to property belonging to a Service, for purposes of search and seizure of information.
- (cc) The IG will get a search warrant before he/she investigates premises outside Services.
- (dd) The IG may delegate certain functions to employees in his or her office.
- (ee) The budget of the IG will be appropriated as part of the budget of the intelligence vote.
- (ff) Minister for Intelligence Services will appoint personnel to the office of the IG.
- (gg) Regulations will be issued as follows:
 - (aa) performance of functions of the IG;
 - (bb) suspension and removal from office of the IG;
 - (cc) security clearances for IG and JSCI;
 - (dd) appointment of staff in the office of the IG;

3. OTHER DEPARTMENTS CONSULTED

Presidential Intelligence Budget Advisory Committee
Department of Safety and Security
Department of Public Service and Administration
Department of Defence

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

D. The Electronic Communications Security Bill, 2002**MEMORANDUM OF THE OBJECTS OF THE ELECTRONIC COMMUNICATIONS SECURITY BILL, 2002****1. SUMMARY OF THE CONTENTS OF THE BILL**

Comsec (Pty) Ltd is established as a private company in terms of the Companies Act, 1973. The state will nominate a Minister to be the sole shareholder in Comsec (Pty) Ltd.

The Company may be exempted from certain provisions of the Companies Act by a declaration made by the Minister of Trade and Industry in the *Gazette*. The Minister [sole shareholder] will on the recommendations of Comsec (Pty) Ltd, request exemptions from the application of certain provisions of the Companies Act, with a full motivation and necessary particulars.

The objectives of Comsec (Pty) Ltd are to secure government critical electronic communications against unauthorised access or other related technical threats.

Comsec (Pty) Ltd may integrate any agencies of the state that provide electronic communications products, systems, and cryptographic services. All government departments and organs of state must procure and access electronic communications products and systems with the verification and approval of Comsec (Pty) Ltd. However, departments or organs of state may be exempted from application of this Act.

The affairs of Comsec (Pty) Ltd will be managed by a Board of nine Directors, one of whom will be a Chief Executive Officer.

2. OTHER DEPARTMENTS CONSULTED

Presidential Intelligence Budget Advisory Committee
Department of Safety and Security
Department of Labour
Department of Justice
Department of Defence
National Treasury
Communications

3. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with

the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

Comments are requested on the National Strategic Intelligence Amendment Bill, 2002, which is published in full. This Bill is already introduced in Parliament. The comments should be sent to:

**The Secretary of Parliament
Attention: Nonzame Mnyaka: Joint Standing Committee on Intelligence
PO Box 15
Cape Town
8000**

Fax number (021) 465 2857

The due date for comments is 30 September 2002.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

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Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

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Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

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